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# Supreme Court of the United States.

OCTOBER TERM, 1891.

*No. 62.*

BERTHA HAMMOND ET AL.,
*Appellants,*
*v.*
WM. B. HOPKINS ET AL.
*Appellees.*

## ADDITIONAL BRIEF FOR APPELLEES.

JOHN J. JOHNSON,
SAM'L L. PHILLIPS,
S. SHELLABARGER,
*of Counsel for Appellees.*

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1891.

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| BERTHA HAMMOND ET AL., APPELLANTS, v. WILLIAM B. HOPKINS ET AL., APPELLEES. | No. 62. |

## Additional Brief for Appellees.

The appellants by an additional brief seek to assail the truthfulness of the general statement contained in appellees' brief, and designate certain items as being untrue. It becomes necessary, therefore, to cite to the Court extracts of the testimony which will show that the criticisms are in the main unfounded and misleading.

1. On page 1 of the additional brief it is claimed that no reference to the record is made to substantiate the appellees' "statement of the case."

This statement was not intended to be a formal rehearsal of the facts of the case, but a general narrative of the main facts as they were deducible from all the evidence given by all the witnesses. For this reason no citation of

pages of the record was attempted at that part of the brief. In the subsequent pages where these facts are taken up seriatim and chronologically the most abundant citations from the record are given with the pages.

2. On page 2 of the additional brief the first inaccuracy claimed against this general narrative is that Isaac H. Hopkins and George Washington Hopkins are spoken of as "young men" at the time of the sale of the property in May, 1864.

The precise age of Isaac is nowhere stated in the record, and the statement in the additional brief that Isaac was then at least forty is gratuitous and unwarranted. He was the oldest son of John Hopkins, and the brother immediately next in age, W. M. S. Hopkins, was only thirty-three years old at the time of the sale. Isaac lived and died unmarried, and never assumed the ordinary responsibilities of manhood. Mrs. Lilburn, his sister, at page 406, record, says:

"Q. Then all the children of John Hopkins lived together in the house of George W. Hopkins?

"A. Except my eldest brother, Isaac. He remained with me all the time before his father's death. He was dissipated in his habits, and was always with us. My husband had a good deal of influence over him, and father would get my husband and myself to keep him in the country."

In reference to George Washington Hopkins, who was younger than William, the latter being thirty-three at the time of the sale, Stephen D. Castleman, at page 45, says:

"Q. How much younger were Levin and George Washington than William?

"A. I cannot answer; I have no idea.

"Q. They were boys in the store, were they not?

"A. No, sir; they were *young men in the store*; they were men in the store.

"Q. About how old were they in 1862?

"A. I have tried to answer that several times. I have no idea of their ages. They were not old men of sixty; neither were they forty or fifty. They might have been thirty.

"Q. Were they partners in the business or only salesmen?

"A. No, sir; only salesmen."

Salesmen in their older brother William's store, who was only thirty-three at the time of the public sale.

It is submitted, therefore, that these individuals may with truth in a general rehearsal of a case be described as "young men," without counsel being subjected to the criticism that their statement is untrue.

3. The criticism at page 2 in regard to the confinement of William M. S. Hopkins is itself untruthful and misleading. It is nowhere stated that his confinement was "continuous," as asserted in the additional brief. On the contrary, the express language of the statement is that William was "at the time of the sale of grossly intemperate habits, and to such an extent that in two months after, namely, in the beginning of August, 1864, *and continuing interruptedly* until about 1870, he was confined *three times* in the U. S. Hospital for the Insane as a dipsomaniac," &c.

The Court will see that the charge made in the additional brief that the statement alleges his confinement to have been "*continuous*" is untrue, is not only entirely too strong an expression, but unwarranted.

4. The criticism at page 3 of the statement that William M. S. Hopkins was pronounced by Dr. Godding and Dr. Franklin as "utterly incapable of enforcing his rights or attending to any business from 1864 to 1870," as utterly untrue, must be met by the counter-statement that the criticism itself is untrue.

Dr. W. W. Godding, at page 251:

"Q. Are you acquainted with Wm. M. S. Hopkins?
"A. I am.
"Q. When was your attention first called to him?
"A. During the summer of 1864. I cannot state the exact day.
"Q. Under what circumstances?
"A. He was then an inmate of the Government Hospital for the Insane."

On pages 251–252, it will be seen he was entered three times as a "dipsomaniac." At page 253 Dr. Godding declares a persistent and excessive use of alcohol impairs the mental faculties. Then follows the question, page 253:

"Q. From your observation of Wm. M. S. Hopkins while under treatment at the U. S. Hospital for the Insane and his use of alcoholic stimulants to a most excessive extent prior to his confinement in the hospital, how far, in your judgment, had such use become a desire and placed him in the category of dipsomaniacs or of persons who were afflicted with inebriety indicating an impairment of will power?
"A. From my observation, my recollection of the case, I should say that he was properly classed as a dipsomaniac, or an inebriate, if you prefer the expression, and that it did become a permanent condition in his case," etc.

At page 254. It will appear by reference to this last page that Dr. Godding did not have charge of Hopkins on his third admission in 1870 as a dipsomaniac:

"A. His third commitment was after I was assistant physician and when I was in charge of the female department. Although I saw Mr. Hopkins frequently I did not have the charge of him," &c.

From this testimony it will appear, therefore, that the statement in appellees' brief was warranted by the facts.

In summing up W. M. S. Hopkins's condition at page 258, Dr. Godding states:

"Q. How far is such a man as you have described Mr. Hopkins to be apt to be affected by the confidence in persons in whom he has a right to repose.

"A. Such a man would be very much like a child—easily led, and it would not be a difficult matter to impose upon such a mind."

The next criticism at page 3 is upon the statement in appellees' brief that the trustees determined not to divide the estate by partition among the children, as they had the power to do, but to sell the entire interest and buy almost the whole bulk of it for themselves; that this was conclusively shown by the testimony for the appellants, and that this information was communicated to the children, with a promise "that they would give as much for it as any one else," the appellees each denying such knowledge.

This statement is also alleged to be untrue. To this it is answered that all the facts show the trustees did not partition, but sold the estate and bought the bulk of it for themselves, and it is proved by Esther E. Hopkins, one of the appellants, nearly one-third owner for life of the property in dispute, and widow of one of the trustees, John S. Hopkins, and witness for appellants, at page 764:

"Q. Before the sale took place, I would be glad to know if there was any conversation in relation to George W. and John S. Hopkins purchasing at the sale, and if so, what?

"A. My uncle, George W. Hopkins, and my husband, John S. Hopkins, told the family that they were going to buy the brick-yard property; *that they would give as much for it* as any one else; and none of them objected at all."

6. The next criticism on page 4 is upon the allegation that "this property was utterly worthless as a brick-yard."

This statement is asserted to be *utterly untrue.* If there is any fact shown in this record, it is the truth of the above statement. The evidence to prove it is quoted at large on pages 39 and 40 of appellees' brief.

By Mr. Graham, page 283, who lived in the neighborhood for 60 years, and who declares there was "but little" clay on the squares after 1864, and that these trustees gathered it from the public "streets." By Jacob Hunaker, at page 276, who was brick-burner for 19 years, and who swears that square 96 had been abandoned as a brick-yard in 1864, and from 4 kilns the premises were reduced to 2 kilns, and they were "very old, cracked, and crooked, and very out of shape."

By Henry Birch, a street contractor and witness for appellants, at page 694, etc. "The clay had been all used up." "The clay was not strong enough; that the brick was too soft," etc. "I used the brick, and walking over the pavement the brick mashed," etc.

There is no evidence to rebut or qualify the above testimony.

7. The next criticism at page 4 is refuted on its own face, and is puerile.

The statement alleges "that after these trustees became the owners, square 96 was subdivided into 58 lots and sold by such subdivision, and square 95 was sold in lots according to the original subdivision." This is all true, and is admitted in the criticism to be true; the objection, however, is that the statement did not go into the details of time when the subdivision and sales were made. This was all shown *in extenso* on pages 50 and 53 of appellees' brief.

8. The next criticism at page 5 is as to the statement "that there was no competition at the sale of squares 95 and 96." Counsel boldly assert this to be untrue. On the contrary, we reaffirm it to be entirely truthful, as the entire

evidence on the point will prove. They cite the testimony of Richard E. Sinclair, page 953. We submit that a perusal of his testimony will show that he has no distinct memory on the subject. He did not know if there were two or three bids. He did not remember at what price the property was started, whether 2 or 3 cents a foot. He did not know who were the bidders, but thought Mr. Gawler might have been the bidder.

Mr. Gawler, at page 273, shows he was not a bidder, and when asked:

"Q. How many bids were there?
"A. I think to the best of my knowledge and belief there was but one bid.
"Q. Do you know for what price it was knocked down?
"A. I think it was for about 4 cents a foot."

We submit that the statement in the appellees' brief that there was "no competition," certainly none of any account, is justified by the above citations, and the criticism that it is "untrue," a little strong. There was only one bid as to square 111.

9. The next criticism at page 5 is that the statement that no defence is offered and no excuse is made for the sale of square 111 as a whole "is untrue." To show its untruth, counsel for appellants refer to Point VI of their brief. They do not point to the evidence, but to their brief. The reason there given, which is only argument, is "the square was simply large enough for the curtilage of a suburban residence."

This is a false excuse, because on August 6, 1868, only four years after George W. Hopkins' purchase, he subdivided the square (see Exhibit R. S. B. No. 22), and sold part. Square 111 was again subdivided on November 7, 1870, and sold part (R. S. B. No. 23), and again sub-

divided on June 17, 1878, when this suburban residence was confined to a lot about 70 feet wide by 80 feet deep, and shorn of its curtilage. Why could this not have been done for the heirs, for no improvement of any consequence started in that neighborhood until after 1880?

10. The next criticism, at page 5, is the typographical errors of $9,093.44 for $9,093.42, and of $10,840.24 for $10,842.24. There was no point made on the exact dollars by the appellees, and the criticism is puerile.

11. The next arraignment, at page 6, is the allegation that the proceedings in the Orphans' Court were *ex parte*.

If there is any point clearly shown in the evidence, it is that these proceedings were entirely *ex parte*, and unknown to the appellees.

See full discussion in appellees' brief at pages 104 and 105.

12. The next arraignment of the truth of the appellees' statement at page 6 is as follows: "This statement is not true, for Mrs. Early nowhere testifies, directly or indirectly, that she did not know at the time of the sale or after the sale that the trustees were the real purchasers at the sale," &c.

We cite the Court to the following verbatim extract of Mrs. Early's testimony, page 443:

"Q. Did you hear anything after the day of the sale as to who had become the purchaser of the property?

"A. Yes, sir; I heard that a bricklayer had purchased it.

"Q. Did you hear his name?

"A. I did not that day.

"Q. Do you remember subsequently, or do you remember of George W. Hopkins and John S. Hopkins subsequently becoming the owners of the property, and if so, what about that?

"A. I saw them continue together every day to the brick-yard and some one said they had bought it.

Next page.

In regard to the statement of appellees that it is untrue that every child of John Hopkins (referring to the four sisters) swore she was ignorant of the purchase of the property by the trustees until informed by S. L. Phillips, a few days before the institution of this suit, we cite the Court to the testimony of Mrs. Lilburn at page 402, record:

"Q. Had you any knowledge or suspicion at any time previous to your interview with Mr. Phillips in regard to these sales being voidable or fraudulent, and if so, what knowledge had you on the subject?

"A. I had no knowledge, only what I received from you.

"Q. Up to that time how had you regarded the performance of the duties by your uncle George and brother John?

"A. As perfectly honorable and honest."

Mrs. Early testifies at page 447, record:

"Q. Had you, prior to that interview (referring to Mr. Phillips' explaining to them the manner in which the trust was executed), had any suspicion of the integrity of the sales made by your uncle George and brother John? If so, please state what you knew of them?

"A. I had no suspicion."

Mrs. Wailes testifies at page 499, record:

"Q. When was it that you first heard that the sales made by your uncle George W. Hopkins and brother John S. Hopkins were not fair and honest to the heirs of your father?

"A. In March last.

"Q. State how you came to hear of that, and through whom?

"A. Through you" (referring to Mr. Phillips).

Page 500:

"Q. Had you any knowledge, prior to that interview, of these sales, which were made by your uncle and brother, being unfair or unjust to the heirs; if so, what knowledge had you prior to that interview?

"A. I had no knowledge."

Mrs. Hall, the last of the four sisters, at page 470:

"Q. When was your attention first called to this subject of the sale of the property, and that you had not been fairly dealt with by your brother John S. Hopkins and your uncle George W. Hopkins?

"A. Last March."

This was the interview with Mr. Phillips.

"Q. Did they say from whom they had bought it?
"A. From a man by the name of Chapman."

Surely it is difficult to characterize the above statement of counsel by its proper term.

Mrs. Wailes, at page 513, says on cross-examination:

"Q. And I understand you thought he had bought the property from the bricklayer who had purchased it?
"A. Yes, sir.
"Q. You knew that he owned that property at that time, did you not?
"A. After the sale?
"Q. After the sale.
"A. Yes, sir," &c.

At page 514.

"Q. You do not recollect the name of the bricklayer?
"A. No, sir.
"Q. But you might have heard it and forgotten it. You do not recollect even the sale?
"A. I heard that a bricklayer bought it."

This testimony entirely refutes the allegation of the additional brief.

13. The criticism at page 6 is that "neither Mrs. Lilburn, nor Mrs. Wailes, nor Mrs. Hall swears that it was represented to her after the sale that her uncle and brother had bought from the bricklayer," and the usual offensive allegation of untruthfulness is indulged in.

As to Mrs. Wailes it is answered by the last above citation of her testimony.

As to Mrs. Lilburn, see page 398:

"Q. On the day of the sale did you hear who did become the purchaser?
A. I heard that a bricklayer had bought it," &c.

As to Mrs. Hall, see page 471:

"When I asked my sister who bought it, she said some man bought the property in. I supposed it was divided up and bought by every one. I did not know that any particular one bought it.

"Q. When was the first time that you had information of this purchase by George W. Hopkins and John S. Hopkins? &c.

"A. Not until you told me in March, 1884."

14. The criticism at page 7 is disproved by the testimony of Mrs. Lilburn at page 395, who swears:

"A. I went down to the room after he came in from the sale. I remarked to him, 'Uncle George, is the land all sold?' He said 'Yes.' I said, 'You did not get but very little for it.' He said, 'No; it was a *bona fide* sale.'"

By Mrs. De Shields, witness for appellants at pp. 812–813:

"Q. Did you ever hear George W. say that the property brought its full price?

"A. Yes, sir; he said that it brought its full price.

"Q. Its full price?

"A. Yes, sir, its full price; and they, the children, thought so too," &c.

"Q. Did you ever hear John S. Hopkins state that the property brought its full price?

"A. Yes, sir; and what every person else did represent."

Mrs. Wailes, Mrs. Early, and Mrs. Hall all believed in the integrity of their uncle.

15. The criticism at page 7 is another wholesale allegation of untruthfulness against the statement that all the female witnesses for appellants, except one, could not identify who were present at the time when it was stated the trustees were to become the purchasers.

Elizabeth J. Dashiell, sister of one of the appellants and aunt to another, at page 751 :

"Q. There was nothing to impress on your mind, at this length of time, who were present, and who stated one thing and who stated another ?

"A. Certainly not.

"Q. You are simply giving your general impression ?

"A. Yes, sir."

Mrs. Georgia L. M. Raub, sister and aunt, as above, was next witness, and at page 755, referring to sale :

"Q. There was nothing, therefore, to impress upon your mind any particular conversation, or who was present at them ?

"A. None at all.

"Q. Nor who were talking ?

"A. No, indeed ; I suppose it was all fair and secure, and did not think anything about it," &c.

Adeline Hopkins, at page 805 :

"Q. There was nothing to impress this subject of their purchase on your mind, as you did not suspicion it ?

"A. No, sir," &c.

"Q. You cannot undertake to state any conversation that occurred so many years ago, can you, madam ?

"A. No, sir ; I cannot. If I had known that anything like this, like this case, I could.

"Q. (Interrupting). You cannot identify conversations at that time that happened within six months or a year at this day, can you ?

"A. No, sir. Some I cannot. I did not tax my mind with them," &c.

Mrs. Eliza Dashiell, page 816 :

"Q. Then your conclusion that they were satisfied is from the fact that you heard no dissent ?

"A. None at all.
"Q. No dissatisfaction?
"A. No, sir.
"Q. From that you judged they were satisfied?
"A. Yes, sir," &c.

Thus we have cited all the witnesses but one, and the Court can see that our statement is fairly and substantially correct that the appellants' witnesses do not identify these appellees as having heard the particulars of the sale.

16. The appellants, at page 7, assert our statement that the trustees never made any return of the $3,741.70, proceeds of sales of lots before the sale of May 10, 1864, to be untrue. We repeat the statement, and say that their citation to pages 1199 and 1200 have nothing to do with these sales. The account in the Orphans' Court only covered sales made on May 10, 1864, and subsequently, and refer the Court to page 100 of our brief for a full explanation of the point.

17. In regard to the statements at pages 8 and 9, about the deed from Wm. M. S. Hopkins to his brother, John S. Hopkins, being only a trust, we refer the Court to pages 110, 111, and 112 of appellees' brief.

18. The last and final criticism, at page 10, is the impeachment of the allegation "that although these trustees bought this property in 1864, yet in every instance when selling it prior to the death of their two brothers, Isaac H. Hopkins and George Washington Hopkins, although the title was in them as individuals, they sold and conveyed as executors and trustees, the same as before their purchase, and it was not until after the death of George Washington Hopkins, the last male in interest, that they asserted their title recorded six years before."

Counsel for the appellees promptly admit that they have unknowingly made an error in making their statement too

broad. In writing the brief they were tracing the frauds of these two trustees jointly, and the Court will find that the statement is literally true as to their joint acts. At the sale of May 10, 1864, the two trustees became joint purchasers of squares 95, 96, and certain lots in 94 and 110. In tracing their subsequent disposition of this joint property, the allegation is strictly true; for notwithstanding their purchase on May 10, 1864, they conveyed lot 16, square 110, on 26th July, 1865, as executors and trustees to Mary Rider, and again on June 3, 1867, they conveyed, as executors and trustees, lot 19, square 110, to Owen Thornton. On 29th June, 1870, George Washington Hopkins died. Up to that date they had made no deed of their joint purchase except as executors and trustees, and it was only on December 16, 1870, they made their first joint conveyance as individuals to Wm. Terrell of lot 39, square 110.

In tracing these conveyances counsel failed, in the hurried preparation of the brief last spring, to follow what George W. Hopkins had been doing with square 111, which he had purchased alone. It is true, as stated in appellants' additional brief, that on the 1st August, 1868, he conveyed as an individual lot 20, in square 111, and again on April 27, 1869, a number of lots as an individual, and again two lots in square 111 on 2d March, 1870.

Counsel for appellees take pleasure in qualifying the above statement, because they recognize most fully that any error or misrepresentation will only work to the great injury of the cause they represent.

Respectfully,

SAM'L L. PHILLIPS.

J. J. Johnson &
Shellabarger & Wilson